IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5401 of 2002
With
CIVIL APPLICATION NO. 4368 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SORATHIA DHANJIBHAI NARANBHAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 5401 of 2002
MR MK VAKHARIA for Petitioner No. 1
ms. d.s. pandit,GOVT PLEADER for Respondent No. 1-3
MR KD VASAVADA for Respondent No. 4,5, 6

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 19/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard. Rule. Ms. D.S. Pandit, learned AGP waives service and accepts notice of rule for respondents No.1 to 3. Mr. H.D. Vasavada for Mr. K.D. Vasavada waives service and accepts notice of rule for respondents No. 4 to 6.

2. Heard learned advocate appearing for the parties. In this writ petition under Article 226 of the Constitution of India, petitioner has been challenging the action of respondents No.1 to 3, whereby respondent No.2 passed the impugned order dated 31-5-2002 (Annexure-A) declaring that the petitioner does not continue to be the member of Agricultural Produce Market Committee, Anjar, i.e. respondent No.1, and consequently his nomination to Anjar Taluka Sahkari Kharid Vechan Sangh (Respondent No.6) automatically stands cancelled.

3. At the hearing it has been submitted by Mr. M.K. Vakharia,learned advocate for the petitioner that the communication dated 22-5-2002 (Annexure-B) requiring him to remain present on 31-5-2002 before respondent no.2 was received by him in the late evening of 30-5-2002, i.e. on the previous day; that as there were disturbances in Ahmedabad City during this time and looking to the distance between Anjar and Gandhinagar it was not possible for him to remain present on 31-5-2002 as required in the communication Annexure-B, a telegram was sent to respondent No. 1 to 3 requesting for time; copy whereof is page-18, but of no avail.

4. Learned AGP Ms. D.S. Pandit, has placed file containing relevant papers for our perusal, including the telegram sent by petitioner on 30-5-2002, requesting for time. The telegram received by respondents No.1 to 3 suggests that the same was received at Gandhinagar telegraph office at 20.46 hrs on 30-5-2002. Two endorsements at the bottom of the said telegram read "31-5-2002 18.00 p.m." and the other suggesting date of 31-5-2002 only, without noting time. Original acknowledgment suggesting service of communication dated 22-5-2002 is also in the file which bears signature of the petitioner but without any date suggesting receipt thereof. It will be seen from the above that the petitioner had received communication at Anneuxre-B on 30-5-2002, and on the same day he sent telegram at 20.48 hrs on 30-5-2002.

5. As the petitioner did not remain present as

required in Annexure-B the impugned order at Annexure-A came to be passed.

6. It appears from the above, that the impugned order Annexure-A has been passed by respondent without giving reasonable opportunity of being heard in the matter to the petitioner. It need hardly be said that the opportunity to be given has to be reasonable, meaning thereby, reasonable time should be given to the person concerned before he is required to appear and have his say in the matter. Looking to the facts as above, it cannot be regarded that the petitioner was given reasonable opportunity of being heard before passing the impugned order Annexure-A. Without entering into the merits of the case, we are inclined to quash the impugned order Annexure-A on the ground that the same is in violation of principles of natural justice in as much as no reasonable opportunity was afforded to the petitioner before the impugned order came to be passed.

7. In the result we allow this petition and make the rule absolute, and we issue writ accordingly and set aside & quash the impugned order Annexure-A dated 31-5-2002, with a direction to the respondents to hear the petitioner and pass order in accordance with law.

8. To avoid any further complication/difficulty, we direct the petitioner to appear before Respondent No.2 on 9-8-2002 at 3.00 p.m. If the petitioner appears on the aforesaid time and date, Respondent No.2 shall hear the petitioner as required in the communication Annexure-B dated 22-5-2002, and thereafter order shall be passed by respondent No.2 in accordance with law. Since date and time is fixed for appearance of the petitioner before respondent No.2, no notice fixing time and date would be necessary by respondent No.2 . Respondents No. 4, 5 and 6 may also appear before Respondent No.2 in the said hearing if they are desirous of appearing. Petition disposed of. Rule made absolute. No order as to costs.

9. In view of the main petition being disposed of, Civil Application No. 4368 of 2002 for joining parties is dismissed as not surviving.

Dt: 19-7-2002 (N.G. Nandi, J)

(H.K. Rathod, J)

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